

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LYNN FRANCHAK

Appeal No. 98-1456
Application No. 08/294,958¹

ON BRIEF

Before CALVERT, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the refusal of the examiner to allow claims 1, 3, 6 and 8 through 11, as amended subsequent to the final rejection. These claims constitute all of the claims pending in this application.²

¹ Application for patent filed August 24, 1994.

² While the examiner has approved entry of the amendment after final rejection filed on September 8, 1997, we note that this amendment has not been clerically entered.

Appeal No. 98-1456
Application No. 08/294,958

We REVERSE.

BACKGROUND

The appellant's invention relates to a baby safety seat.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Dustin	2,667,917	Feb. 2, 1954
Skolnik	4,568,125	Feb. 4, 1986
Dukatz et al. (Dukatz)	5,224,756	July 6, 1993
Allum	5,354,121	Oct. 11, 1994
		(filed Feb. 18,
		1993)
Guieu-Gambino	2,707,568	Jan. 20, 1995 ³
	(France)	

Rather than reiterate the rejections and the conflicting viewpoints advanced by the examiner and the appellant regarding the rejections made by the examiner, we make reference to the examiner's answer (Paper No. 9, mailed May 3, 1996) and the two supplemental examiner's answers (Paper Nos. 12 and 15, mailed July 10, 1997 and December 9, 1997) for the examiner's complete reasoning in support of the rejections,

³ We note that this reference is not available as prior art since its publication date is subsequent to this application's filing date.

and to the appellant's brief (Paper No. 11, filed June 10, 1997) and reply brief (Paper No. 13, filed September 8, 1997) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The indefiniteness rejections

The examiner rejected claim 9 (Paper No. 9) under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention. Later, the examiner rejected claim 1 (Paper No. 12) under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

The appellant submitted an amendment to claims 1 and 9 on September 8, 1997 to overcome the above-noted rejections. While the examiner noted that this amendment has been entered

(see Paper No. 15), the examiner did not specifically withdraw the above-noted rejections. Accordingly, those rejections are still before us on this appeal.

We will not sustain the examiner's rejection of claims 1 and 9 under 35 U.S.C. § 112, second paragraph. Clearly the language presently used in claims 1 and 9 is definite, as required by the second paragraph of 35 U.S.C. § 112 (see In re Venezia, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976)), since the metes and bounds of the claimed invention are defined with a reasonable degree of precision and particularity.

The obviousness rejections

We will not sustain any of the examiner's rejections of claims 1, 3, 6 and 8 through 11 under 35 U.S.C. § 103.

Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness

with respect to the claims under appeal. In rejecting claims under

35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 9 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

The appellant argues that the applied prior art does not suggest the claimed subject matter. We agree.

All the claims under appeal require a child safety seat to include a lower seating panel/section having separate integral leg support elements that are spaced apart from one another to define an opening. However, it is our opinion that these limitations are not suggested by the applied prior art. In that regard, while both Sckolnik and Allum teach child safety seats, neither Sckolnik or Allum teach or suggest using a lower seating

panel/section having separate integral leg support elements that are spaced apart from one another to define an opening. To supply these omissions in the teachings of Sckolnik and Allum, the examiner made a determination (answer, pages 5-6) that these differences would have been obvious to an artisan based upon the teachings of Dukatz. However, it is our view

that this determination of the examiner has not been supported by any evidence that would have led an artisan to arrive at the claimed invention.

In our view, the only suggestion for modifying Skolnik and Allum in the manner proposed by the examiner to meet the above-noted limitations stems from hindsight knowledge derived from the appellant's own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). It follows that we cannot sustain the examiner's rejections of claims 1, 3, 6 and 8 through 11.⁴

⁴ We have also reviewed the Dustin reference additionally applied in the rejection of claim 8 but find nothing therein which makes up for the deficiency discussed above.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 3, 6 and 8 through 11 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

JVN/gjh

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APPEAL NO. 98-1456 - JUDGE NASE
APPLICATION NO. 08/294,958

APJ NASE

APJ McQUADE

APJ CALVERT

DECISION: **REVERSED**

Prepared By: Gloria Henderson

DRAFT TYPED: 01 Feb 99

FINAL TYPED: